

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FELICIA SCOTT,

Plaintiff,

-against-

DOORDASH; UBER EATS; INSTACART,

Defendants.

24-CV-1783 (LTS)

ORDER OF DISMISSAL  
WITH LEAVE TO REPLEAD

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff, who is appearing *pro se*, brings this action invoking the court's federal question jurisdiction and alleging that Defendants DoorDash, Uber Eats, and Instacart violated her rights. By order dated April 1, 2024, the Court granted Plaintiff's request to proceed *in forma pauperis* ("IFP"), that is, without prepayment of fees. For the reasons set forth below, the Court dismisses the complaint, but grants Plaintiff 30 days' leave to replead her claims in an amended complaint.

**STANDARD OF REVIEW**

The Court must dismiss an IFP complaint, or any portion of the complaint, that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction of the claims raised. *See Fed. R. Civ. P. 12(h)(3)*.

While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the "strongest [claims] that they suggest," *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in

original). But the “special solicitude” in *pro se* cases, *id.* at 475 (citation omitted), has its limits – to state a claim, *pro se* pleadings still must comply with Rule 8 of the Federal Rules of Civil Procedure, which requires a complaint to make a short and plain statement showing that the pleader is entitled to relief.

Rule 8 requires a complaint to include enough facts to state a claim for relief “that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible if the plaintiff pleads enough factual detail to allow the Court to draw the inference that the defendant is liable for the alleged misconduct. In reviewing the complaint, the Court must accept all well-pleaded factual allegations as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). But it does not have to accept as true “[t]hreadbare recitals of the elements of a cause of action,” which are essentially just legal conclusions. *Twombly*, 550 U.S. at 555. After separating legal conclusions from well-pleaded factual allegations, the Court must determine whether those facts make it plausible – not merely possible – that the pleader is entitled to relief. *Id.*

## BACKGROUND

Plaintiff, who resides in Brooklyn, New York, brings this action using the court’s general complaint form. She checks the box on the form to invoke the court’s federal question jurisdiction and, in response to the question asking which of her federal constitutional or federal statutory rights have been violated, she writes, “[h]uman, lack of consideration for unsafe areas, lack of empathy for me as a worker.”<sup>1</sup> (ECF 1, at 2.)

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<sup>1</sup> Plaintiff writes using irregular capitalization. For readability, the Court uses standard capitalization when quoting from the complaint. All other spelling, grammar, and punctuation are as in the original unless otherwise indicated.

Plaintiff states that the events giving rise to her claims occurred at various locations throughout the five boroughs of New York City, from 2022 to March 2023. Plaintiff alleges the following facts:

I am a former DoorDash/Uber/Instacart employee. I feel that they are very brutal and unfair. I was sent to far away places and was not given a chance to make my delivery w/o penalty. Some of the places (photo) (attached) were very far and hard to get to. For example once I was sent to an address that led me through a park, a school yard, and a highway on a rainy night. Then I was reprimanded for a late delivery.

They also promised me reinstatement after 3 months only to deny me.

(*Id.* at 5.)<sup>2</sup>

Plaintiff describes her injuries as follows:

I have a sore leg and my legs were constantly swollen from addresses that required going up steps and customers refusing to come downstairs. I was getting headaches from the stress of not being able to continue to work.

(*Id.* at 6.) She seeks \$500,000 in damages.

## DISCUSSION

The subject matter jurisdiction of the federal district courts is limited and is set forth generally in 28 U.S.C. §§ 1331 and 1332. Under these statutes, a federal district court has jurisdiction only when a “federal question” is presented or when plaintiff and defendant are citizens of different states and the amount in controversy exceeds the sum or value of \$75,000. “[I]t is common ground that in our federal system of limited jurisdiction any party or the court *sua sponte*, at any stage of the proceedings, may raise the question of whether the court has subject matter jurisdiction.” *United Food & Com. Workers Union, Loc. 919, AFL-CIO v. CenterMark Prop. Meriden Square, Inc.*, 30 F.3d 298, 301 (2d Cir. 1994) (quoting *Manway*

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<sup>2</sup> There are no attachments to the complaint.

*Constr. Co., Inc. v. Hous. Auth. of the City of Hartford*, 711 F.2d 501, 503 (2d Cir. 1983)); see Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”); *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999) (“[S]ubject-matter delineations must be policed by the courts on their own initiative.”).

#### A. Federal question jurisdiction

To invoke federal question jurisdiction, a plaintiff’s claims must arise “under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. A case arises under federal law if the complaint “establishes either that federal law creates the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal law.” *Bay Shore Union Free Sch. Dist. v. Kain*, 485 F.3d 730, 734-35 (2d Cir. 2007) (quoting *Empire Healthchoice Assur., Inc. v. McVeigh*, 547 U.S. 677, 690 (2006)). Mere invocation of federal jurisdiction, without any facts demonstrating a federal law claim, does not create federal subject matter jurisdiction. See *Nowak v. Ironworkers Loc. 6 Pension Fund*, 81 F.3d 1182, 1188-89 (2d Cir. 1996).

Here, Plaintiff invokes the Court’s federal question jurisdiction, but the allegations in the complaint suggest that Plaintiff may be attempting to assert claims concerning the conditions of her private employment as a delivery worker leading to personal injuries. Such claims generally arise under state law and Plaintiff has not alleged facts suggesting a viable claim arising under federal law.<sup>3</sup> The Court therefore does not have federal question jurisdiction of this action.

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<sup>3</sup> If, in bringing this action, Plaintiff is seeking to bring claims under any of the federal employment discrimination statutes, such as Title VII of the Civil Rights Act, the Americans with Disabilities Act, or the Age Discrimination in Employment Act, she would have to file a separate complaint against each employer and allege facts suggesting a viable federal employment

## B. Diversity jurisdiction

Any conditions of employment and personal injury claims Plaintiff seeks to bring would arise under state law, but she does not allege facts demonstrating that the Court has diversity of citizenship jurisdiction of her state law claims. To establish diversity of citizenship jurisdiction under 28 U.S.C. § 1332, a plaintiff must first allege that the plaintiff and the defendant are citizens of different states. *Wis. Dep't of Corr. v. Schacht*, 524 U.S. 381, 388 (1998). For diversity purposes, an individual is a citizen of the State where he or she is domiciled, which is defined as the place where a person “has his [or her] true fixed home . . . and to which, whenever he [or she] is absent, he [or she] has the intention of returning.” *Palazzo ex rel. Delmage v. Corio*, 232 F.3d 38, 42 (2d Cir. 2000) (internal quotation marks and citation omitted). A corporation is a citizen “of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.” 28 U.S.C. § 1332(c)(1); *see also Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010) (a corporation’s principal place of business is its “nerve center,” usually its main headquarters). In addition, the plaintiff must allege to a “reasonable probability” that the claim is in excess of the sum or value of \$75,000, the statutory jurisdictional amount. *See* 28 U.S.C. § 1332(a); *Colavito v. N.Y. Organ Donor Network, Inc.*, 438 F.3d 214, 221 (2d Cir. 2006) (citation and internal quotation marks omitted).

Here, Plaintiff does not allege facts demonstrating that the Court has diversity of citizenship jurisdiction. She alleges that she is a resident of the State of New York, and states that all three defendants were incorporated in California, but indicates that at least one of the defendants, which she does not specify, has its principal place of business in New York. (ECF 1

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discrimination claim against each employer. The Court expresses no opinion as to the merits of any federal employment discrimination claims Plaintiff may choose to file.

at 1-2.) Because Plaintiff and at least one of the defendants could be considered citizens of New York, she does not allege that the parties have diverse citizenship.

Furthermore, Plaintiff also does not allege to a “reasonable probability” that the claim is in excess of the sum or value of \$75,000, the statutory jurisdictional amount. *See* 28 U.S.C. § 1332. There is in this Circuit “a rebuttable presumption that the face of the complaint is a good faith representation of the actual amount in controversy.” *Wolde-Meskel v. Vocational Instruction Project Cnty. Servs., Inc.*, 166 F.3d 59, 63 (2d Cir. 1999). Where a complaint, however, does not contain facts plausibly suggesting that the amount in controversy meets the jurisdictional minimum, the Court is not required to presume that the bare allegations in the complaint are a good faith representation of the actual amount in controversy. *See Chavez v. Maker*, No. 18-CV-7965 (RA) (GWG), 2019 WL 4926348, at \*4 (S.D.N.Y. Oct. 7, 2019) (“A plaintiff seeking to invoke diversity jurisdiction ‘cannot meet its burden of proof with mere conclusory allegations of indirect or speculative value.’” (citation omitted)), *report & recommendation adopted sub nom.*, *Chavez v. Wylie*, 2019 WL 6873806 (S.D.N.Y. Dec. 17, 2019), *appeal dismissed*, No. 20-383, 2020 WL 4332758 (2d Cir. May 28, 2020); *Weir v. Cenlar FSB*, No. 16-CV-8650 (CS), 2018 WL 3443173, at \*12 (S.D.N.Y. July 17, 2018) (reasoning that “the jurisdictional amount, like any other factual allegation, ought not to receive the presumption of truth unless it is supported by facts rendering it plausible” (citation omitted)).

Here, Plaintiff seeks \$500,000 in damages, but she does not allege any facts describing the losses she incurred or why Defendants should be held liable for that amount. She therefore does not allege facts plausibly suggesting that she has suffered any damages amounting to the \$500,000 she seeks.

Because Plaintiff has failed to allege facts showing that the Court has either federal question or diversity of citizenship jurisdiction of this matter, the Court dismisses Plaintiff's complaint for lack of subject matter jurisdiction. *See Fed. R. Civ. P. 12(h)(3).*

#### **LEAVE TO REPLEAD**

Plaintiff proceeds in this matter without the benefit of an attorney. District courts generally should grant a self-represented plaintiff an opportunity to amend a complaint to cure its defects, unless amendment would be futile. *See Hill v. Curcione*, 657 F.3d 116, 123-24 (2d Cir. 2011); *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988). Indeed, the Second Circuit has cautioned that district courts "should not dismiss [a *pro se* complaint] without granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated." *Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000) (quoting *Gomez v. USAA Fed. Sav. Bank*, 171 F.3d 794, 795 (2d Cir. 1999)).

Because the Court cannot say at this time that amendment would be futile, the Court grants Plaintiff leave to file an amended complaint alleging facts demonstrating that the Court has subject matter jurisdiction of her claims. If Plaintiff invokes federal question jurisdiction, she must allege facts suggesting a viable claim arising under the federal constitution or a federal statute. If Plaintiff invokes diversity of citizenship jurisdiction, she must allege facts demonstrating that the parties are citizens of different states and that her claims are worth in excess of the \$75,000 jurisdictional threshold.

#### **CONCLUSION**

The Court dismisses this action for lack of subject matter jurisdiction. *See Fed. R. Civ. P. 12(h)(3).* The Court, however, grants Plaintiff 30 days' leave to file an amended complaint in which she alleges facts sufficient to show that the Court has subject matter jurisdiction to consider this action. If Plaintiff fails to file an amended complaint within the time allowed, and

cannot show good cause as to why such failure should be excused, the Court will enter judgment dismissing this action for the reasons set forth in this order.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

The Court directs the Clerk of Court to hold this matter open on the docket until a civil judgment is entered.

SO ORDERED.

Dated: August 26, 2024  
New York, New York

/s/ Laura Taylor Swain

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LAURA TAYLOR SWAIN  
Chief United States District Judge

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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Write the full name of each plaintiff.

CV \_\_\_\_\_  
(Include case number if one has been assigned)

-against-

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**AMENDED**

**COMPLAINT**

Do you want a jury trial?

Yes     No

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Write the full name of each defendant. If you need more space, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section II.

**NOTICE**

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

## I. BASIS FOR JURISDICTION

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation, and the amount in controversy is more than \$75,000, is a diversity case. In a diversity case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal-court jurisdiction in your case?

- Federal Question**
- Diversity of Citizenship**

### A. If you checked Federal Question

Which of your federal constitutional or federal statutory rights have been violated?

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### B. If you checked Diversity of Citizenship

#### 1. Citizenship of the parties

Of what State is each party a citizen?

The plaintiff, \_\_\_\_\_, is a citizen of the State of  
(Plaintiff's name)

\_\_\_\_\_  
(State in which the person resides and intends to remain.)

or, if not lawfully admitted for permanent residence in the United States, a citizen or subject of the foreign state of

\_\_\_\_\_.  
If more than one plaintiff is named in the complaint, attach additional pages providing information for each additional plaintiff.

If the defendant is an individual:

The defendant, \_\_\_\_\_, is a citizen of the State of  
(Defendant's name)

or, if not lawfully admitted for permanent residence in the United States, a citizen or subject of the foreign state of

If the defendant is a corporation:

The defendant, \_\_\_\_\_, is incorporated under the laws of  
the State of \_\_\_\_\_

and has its principal place of business in the State of \_\_\_\_\_

or is incorporated under the laws of (foreign state) \_\_\_\_\_

and has its principal place of business in \_\_\_\_\_.

If more than one defendant is named in the complaint, attach additional pages providing information for each additional defendant.

## II. PARTIES

### A. Plaintiff Information

Provide the following information for each plaintiff named in the complaint. Attach additional pages if needed.

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First Name	Middle Initial	Last Name
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Street Address
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County, City	State	Zip Code
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Telephone Number	Email Address (if available)
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**B. Defendant Information**

To the best of your ability, provide addresses where each defendant may be served. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are the same as those listed in the caption. Attach additional pages if needed.

Defendant 1:

First Name	Last Name	
Current Job Title (or other identifying information)		
Current Work Address (or other address where defendant may be served)		
County, City	State	Zip Code

Defendant 2:

First Name	Last Name	
Current Job Title (or other identifying information)		
Current Work Address (or other address where defendant may be served)		
County, City	State	Zip Code

Defendant 3:

First Name	Last Name	
Current Job Title (or other identifying information)		
Current Work Address (or other address where defendant may be served)		
County, City	State	Zip Code

Defendant 4:

First Name	Last Name	
Current Job Title (or other identifying information)		
Current Work Address (or other address where defendant may be served)		
County, City	State	Zip Code

**III. STATEMENT OF CLAIM**

Place(s) of occurrence: \_\_\_\_\_

Date(s) of occurrence: \_\_\_\_\_

**FACTS:**

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and what each defendant personally did or failed to do that harmed you. Attach additional pages if needed.

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**INJURIES:**

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

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**IV. RELIEF**

State briefly what money damages or other relief you want the court to order.

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## V. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I agree to notify the Clerk's Office in writing of any changes to my mailing address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

Dated	Plaintiff's Signature	
First Name	Middle Initial	Last Name
Street Address		
County, City	State	Zip Code
Telephone Number	Email Address (if available)	

I have read the Pro Se (Nonprisoner) Consent to Receive Documents Electronically:

Yes    No

If you do consent to receive documents electronically, submit the completed form with your complaint. If you do not consent, please do not attach the form.